

1926

First Trial of the Constitution

Wade Millis

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Wade Millis, First Trial of the Constitution, 16 J. Am. Inst. Crim. L. & Criminology 573 (May 1925 to February 1926)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

THE FIRST TRIAL OF THE CONSTITUTION

WADE MILLIS¹

The War of the Révolution was ended by the Treaty of Paris in 1783. For four years afterward the American states struggled and floundered in their new-born independence, in the chaos that has been the usual aftermath of war. The articles of confederation had proved barely adequate to hold the colonies together during the Revolution when they all were in common danger. With the war ended it soon became apparent that these articles at best provided only for a confederation, not a union of the states, and these did not possess sufficient adhesive force to insure a continuance of their union as an independent nation. After many different expedients had been suggested the constitutional convention was called into being for the purpose of framing a new plan of government. This convention completed its labors in Philadelphia in September, 1787, after a long session through the sweltering heat of the summer behind locked doors in Independence Hall. The debates and discussions that followed the publication of the proposed Constitution which had been brought forth by that convention were so intensive and bitter as to jeopardize even the possibility of a trial of the new plan of government that was sought to be launched.

One by one, however, eleven of the thirteen states, led by Delaware, had ratified the Constitution, and pursuant to the provisions of Article VII it was declared to be established, and the great experiment in a republican form of government was inaugurated on April 30, 1790, with Washington as the first president. With moderation and calm judgment he took command of the ship of state, with the newly adopted Constitution as his chart and with no compass save that afforded by his own poise and wisdom. With no previous experience as a civil administrator, with no models or precedents to guide him and no funds to carry on the necessary expenses of the infant nation and with no sustaining credit, his accomplishment in statecraft proved to be greater than any victory he had ever won at arms.

The genius of the first secretary of the treasury, Alexander Hamilton, was never more thoroughly tested than in those early days of the republic, but the results that attended his efforts fully justified the encomium that was pronounced later upon him by Webster:

¹Lieut. Colonel, Judge Advocate General, Reserves, Army of the United States. President, Michigan Bar Association, Detroit, Mich.

Copyright, 1926, by Wade Millis.

"He smote the rock of public resources and abundant streams of revenue gushed forth; he touched the corpse of public credit and it sprang upon its feet."

Other difficulties, however, more political in their nature, seriously beset our new nation. Despite the solemn obligations imposed by the Treaty of Paris of 1783, which provided:

" . . . His Britannic Majesty shall with all convenient speed without causing any destruction . . . withdraw all his armies, garrisons and fleets from the said United States."

England, nevertheless, still held possession of and maintained garrisons of troops at Erie, Oswego, Detroit, Mackinac Island and other less important places within our borders. This was a most irritating situation, and besides the studied contempt and indifference which other nations bestowed upon this new republic, the individual states themselves by reason of their greater age and fancied importance maintained an air of high superiority. They were jealous of each other and loath to admit the supremacy of the federal government under the delegated powers so plainly provided in the Constitution, notwithstanding the fact that it was declared to be the supreme law of the land.

Such, in general, were the conditions in 1794 when the United States government encountered its first test of actual stability. It is this first trial of the United States Constitution, so to speak, the first test of federal supremacy under that fundamental law, that this paper is designed to review. As happens frequently in other cases the incident that afforded that first trial was in itself what appears now to have been relatively trivial. Its very name, "The Whisky Insurrection," suggests ridicule, but its importance lies in the fact that it was the first direct challenge to the constitutional form of government that we ourselves had established. Popular historical works, the only ones with which most of us are familiar, give but meager space to the story of this insurrection and still less to its causes and to the important and far-reaching effects of the manner by which it was suppressed. The hope is entertained therefore that a somewhat more detailed account of this first effort to establish the doctrine of states rights may not be entirely devoid of interest and value to those who read the records of the development of a great nation founded on the republican idea.

Some idea of the conditions prevailing in western Pennsylvania which was the scene of the insurrection may here be appropriate to

note. The principal occupation of the inhabitants of that part of the state was agriculture and crops of grain were especially abundant, but there was no suitable market readily available. There were no roads, canals or other means of easy transportation over the Alleghanies, whose rugged heights were interposed between this region and the seaboard cities. The only natural means of transportation was the long and dangerous route down the Ohio and Mississippi rivers, and even that route was not feasible as an outlet, for the Spaniards then controlled the lower Mississippi.

Besides the difficulty involved and the time necessarily required to carry freight over the mountain ranges in the more direct route to the sea, the expense of transporting heavy and bulky products such as grain was entirely prohibitive. For illustration, the transportation charge alone on grain from western Pennsylvania to Philadelphia was more than the price that it would bring in that market. Conversely, the prices that the farmers had to pay for such necessities as salt, iron, etc., that had to be transported to them over the mountains were so high as to make those common articles alone almost beyond their reach. In consequence of these conditions the western Pennsylvania farmers proceeded to distill their grain into liquor and for that product which was so much more portable a rapidly growing trade was established. It will be remembered incidentally that neither the lawfulness, nor the morality of distilling, selling or drinking whisky was the subject of question or criticism in that day.

As we have previously observed, the federal government was without funds or means of securing revenue at the beginning of its existence. To meet that imperative and first need, duties were laid upon imported goods. The revenue from that source proving to be insufficient, Congress, upon the recommendation of the secretary of the treasury, enacted a law imposing excise taxes upon certain articles of luxury, including among other things distilled liquors and also upon stills themselves. Such a means for raising revenue was entirely lawful and proper on the part of the federal government. Moreover, the Constitution provided that "all duties, imports and excises shall be uniform throughout the United States." (Art. I, Sec. 8) But it was argued that though a given article might be taxed alike in all the states, the tax might nevertheless be very unequal, and more burdensome in one locality than in another by reason of peculiar conditions, and that in such cases it was unjust, and that in states or given localities where it operated adversely to the interests of the citizens a resistance to such a law was warranted.

Little if any whisky was manufactured in the other states. To the citizens of these other states the excise law therefore constituted and almost imperceptible burden, but in western Pennsylvania, where more whisky was made than by any equal population elsewhere, owing to the conditions above stated, the weight of this tax fell upon those least able to bear such a demand. In Pennsylvania whisky even took the place of currency to a large extent, a gallon being equivalent to one shilling. The excise tax, which was about seven cents a gallon, was therefore a severe burden.

On July 27, 1791, a public meeting was held at Redstone Old Fort, now Brownstown, on the Monongahela river, on which occasion concerted action in opposition to the federal excise law was approved and preliminary steps were taken to make such opposition effective and emphatic. A little later a committee from Washington county, Pennsylvania, adopted resolutions which were published in the Pittsburgh Gazette to the effect that

"Any person who had accepted or might accept an office under Congress in order to carry the Excise Law into effect should be considered inimical to the interests of the country;"

and recommending that the citizens of Washington county treat every person accepting such office with contempt and absolutely to refuse all kind of communication with him and withhold from him all aid, support or comfort. And in September following delegates from four counties of western Pennsylvania met at Pittsburgh and passed severe resolutions in opposition to the law. These meetings of Pennsylvania citizens, among which were included many who were influential in that community, served to give unusual emphasis and consistency to the opposition to the excise law and they were followed by violent personal attacks upon the United States collectors who in some instances were tarred and feathered and otherwise brutally assaulted. In one instance the government procured the use of the house owned by Captain William Faulkner of the United States army for an inspection office. Captain Faulkner, yielding to the threats of citizens to do him personal violence, published a notice in the Pittsburgh Gazette announcing that he would no longer permit his premises to be used for such a purpose.

In September, 1792, President Washington issued a proclamation enjoining all persons to submit to the law and to desist from all manner of proceedings in violation thereof, and upon the earnest solicitation of the secretary of the treasury it was determined to prose-

cute all persons delinquent in paying the excise tax, to seize unexcised spirits and to make no purchases of any alcoholic liquors for the army upon which the excise tax had not been paid. It is especially interesting to note that at that time liquor constituted a part of the regular ration of the United States soldier. In the spring of the following year attacks were made upon the persons of various federal collectors and upon the premises occupied by them. Warrants were issued against the offenders, but the sheriff refused to execute the writs, whereupon he himself was indicted. One collector was compelled to publish his resignation of office in the public press on pain of having his house burned.

In spite of these excesses in flagrant opposition to the federal law, matters quieted down to some extent and the hope was entertained that the difficulty was over, but in June, 1794, the opposition revived with still greater violence and an attack was made upon the office and house of one John Wells, collector for Westmoreland county. Shots were fired and ultimately some of the outbuildings were burned. This attack was renewed a few days later with still greater vigor. Another collector, Captain Webster, the excise officer for Somerset county, was attacked by a large body of men who took away from him his commission and humiliated him by acts of personal violence.

The federal government then attempted pacific measures. In June, 1794, the excise law was amended so as to lessen the tax and remove some of the features that were considered most objectionable. The result, however, was to provoke still greater dissension. It was argued that it was not the *amount* of the tax, but the *principle* involved, and reference was made to the Stamp Tax episode preceding the revolutionary war as a justification for the attitude assumed. The government thereupon, realizing that it was necessary to meet the opposition with more decision, endeavored again to adjust the difficulty through the courts. Several of the chief offenders were indicted and summoned for trial at Philadelphia. This emphasized the dissension still more, for these processes against delinquent distillers were served during the period of harvest time when the men could least afford to be absent and it was still more objectionable because the place of trial was so far distant. The federal officers met opposition in their endeavor to serve the processes from the court and were fired upon. This was followed by the organization of an armed force under the command of one Major McFarlane, who had been an officer in the revolutionary war. In a clash at arms that followed, McFarlane was killed. This incident greatly increased the excitement. The leaders

of these insurrection activities became fearful that reports adverse to the policy they were pursuing were being forwarded to the federal authorities at Philadelphia, and to determine what news was being sent they robbed the United States mails to obtain information. Letters objectionable to them were found and published and the authors were forced to leave the country. Indeed, the sentiment against the federal authority became so strong and intense that it was said, possibly with some extravagance:

"A breath in favor of the law was sufficient to ruin any man. It was considered as a badge of Toryism. A clergyman was not thought orthodox in the pulpit unless against the law. A physician was not capable of administering medicine unless his principles were right in this respect. A lawyer could have no practice without at least concealing his sentiments, if for the law. Nor could a merchant at a country store get custom. On the contrary, to take opposition against the law was the way to office and emolument. To go to the Legislature or to Congress you must make a noise against it. It was the shibboleth to safety and the ladder of ambition."

A further and more extensive demonstration of armed forces under the command of one Bradford then developed. This force intended originally to attack the small federal garrison at Fort Pitt in Pittsburgh but that plan was abandoned. The insurgents, however, did march in a body through the streets of that city and some rioting was the result. This continued flaunting of the law made it evident that determined steps must be taken at once; otherwise the federal government would have to admit its inability and inefficiency to cope with such conditions. Governor Mifflin, of Pennsylvania, appointed Chief Justice McKean, of Pennsylvania, and General William Irvine as commissioners to proceed immediately to the western part of the state to ascertain all the facts incident to the insurrection and to endeavor to bring the insurgents to a sense of their duty. President Washington issued a proclamation of warning commanding:

" . . . All persons being insurgents on or before the first day of September, 1794, to disperse and retire peaceably to their respective abodes. . . ."

Meanwhile a circular letter was issued by Bradford to the commanding officers of several militia regiments in the western counties of Pennsylvania instructing them to assemble their commands equipped with arms, ammunition and rations and to march to Braddocks Field as a general rendezvous. This, of course, was entirely without authority, but strange as it may seem, a force numbering about two thousand

men of various military organizations obeyed. Intense excitement followed this evidence of openly organized rebellion.

The authorized strength of the regular army at this time was 5,120 officers and men but the actual numerical strength was 3,619, of which 2,643 were under the command of General Anthony Wayne on the western frontier where he achieved a brilliant and decisive victory at the battle of Fallen Timber on the Maumee river in the late summer of 1794. The remainder of the regular army, comprising 976 officers and men, was scattered among posts on the Ohio, the southwest, Georgia and at various points on the seacoast. Dependence was therefore necessarily placed upon the state militia to supply the force required to subdue the insurrection. It was freely predicted that the militia would not respond to a call for such service on account of the quite general sympathy with the insurrection, and never before had militia been called out by the president for any purpose other than for training. But with fine courage Washington issued an order calling into the service of the United States 12,950 of the militia of which the quota of Pennsylvania itself was 5,200, of New Jersey 2,100, of Maryland 2,350 and of Virginia 3,300, the order further directing that these troops be held in readiness to march at a moment's warning. Major Ganoe, in his excellent history of the United States army, from which the above figures are taken, asks the significant question:

"What would the President have done had the states refused?"

Shortly thereafter the president appointed James Ross, James Yeates and William Bradford as United States commissioners to proceed at once to western Pennsylvania and confer with such organizations or individuals as they might approve in order to quiet and extinguish the insurrection, giving to the commissioners broad instructions and ample powers concerning their mission. Several conferences between the commissioners appointed by the governor of Pennsylvania and those appointed by the president followed, but no definite results were accomplished. On one occasion the question was submitted to a large meeting of citizens:

"Will the people submit to the laws of the United States upon the terms proposed by the commissioners of the United States?"

and great difficulty was encountered in procuring a vote upon this. A standing vote could not be procured for those present were unwilling to announce publicly their views. Neither would they write a ballot lest their handwriting should be recognized. It was finally determined

that "yea" and "nay" should be written by the secretary on similar pieces of paper and be distributed, with the understanding that each citizen might destroy the ballot that he did not use. The final result, however, of these peace negotiations amounted to practically nothing. Then President Washington decided that the time had arrived to dispose of the insurgents by force of arms. Orders were issued directing the army composed entirely of militia to proceed to the scene of the disturbance. This army had in the meantime been increased to 15,000, larger numerically than any one American force in the field during the revolution. Governor Henry Lee of Virginia was in command, with Governor Thomas Mifflin of Pennsylvania, Governor Richard Howell of New Jersey, Governor Thomas S. Lee of Maryland and General Daniel Morgan of Virginia in subordinate command, respectively, of the men from each of their states.

President Washington himself proceeded with this army for a time as commander in chief under the authority and power conferred upon him by the Constitution. This is the only instance in which a president of the United States has thus taken the field at the head of an army under his constitutional powers and authority in direct command. Washington was accompanied also by General Henry Knox, secretary of war; Alexander Hamilton, secretary of the treasury, and by Judge Richard Peters of the United States district court of Pennsylvania.

General Washington went with the army to Carlisle, Harrisburg, Williamsport, Chambersburg, Ft. Cumberland and as far as Bedford, Pennsylvania, which point was reached on September 19, 1794. At several of these places he delivered moderate and dignified addresses cautioning and warning the citizens to obey the laws, to disperse quietly and peaceably and to avoid the necessity of any bloodshed. He made it very clear, however, that the federal law would be upheld by whatever force it might become necessary to employ. On September 28th, believing that his services were more urgently required at the seat of government, then located in Philadelphia, Washington returned to the capital, leaving the command of the expedition in the hands of General Lee, and upon him he conferred power to treat with the insurgent citizens. General Lee appears to have conducted the expedition and carried out the important functions assigned to him in a most capable and diplomatic manner. He urged in addresses and orders that he promulgated

"That he expected from all good citizens the most active and faithful co-operation, which could not be more effectually given than by circulating in public the truth among the people and inducing the various clubs which

had so successfully poisoned the minds of the inhabitants to continue their usual meetings for the pious purpose of contradicting with their customary formality their past pernicious doctrines; that conduct so candid should particularly atone for the injuries which in a great degree were attributable to their instrumentality."

Again, Lee published an address to the inhabitants of the four western counties recommending them to subscribe to an oath to support the Constitution and obey the laws and to enter into an association to protect and aid all officers of the government in the execution of their respective duties. The army meanwhile advanced and in early November reached the scene of the principal disorders that have been enumerated. Upon its arrival the citizens discontinued their rebellious tactics and a general sentiment of loyalty to the federal government was evidenced by the inactivity in subscribing to the oath which General Lee had proposed. No conflict at arms was found necessary and none ensued. General Morgan with a force of about 2,500 men was directed to remain in and about Pittsburgh to insure order and the remainder of the army was ordered to return and was mustered out of the service.

A formal investigation in the nature of a grand jury proceeding was held by Judge Peters, resulting in indictments against about two hundred of the instigators of the insurrection. Subsequently, the greater number of these persons were released while the others were sent to Philadelphia for trial. Several were convicted. Of these some were imprisoned for a short time, but all were subsequently pardoned.

The effect of the quelling of the Whisky Insurrection in the language of Rev. Dr. James Carnahan, a thoughtful observer residing at the scene of the disturbance "was salutary as an example showing that the federal government was not a rope of sand which might be broken at the will of any section of the country whenever any state, or part of a state, thought a particular law might be oppressive."

It was a severe test for the several states to yield promptly and with unanimous accord to the necessary demands of a strong central governmental authority, particularly as the country was large, its population was of very diverse qualities, and the states had not become fully adjusted to the operation and effects of the powers they had delegated under the Constitution. Furthermore, the natural tendency of our people was to resent authority and the normal restraints of law had become less effective during the eight years of war which had so lately been officially ended but which in fact still existed by reason of remaining difficulties with England that prompted her still to hold

and to occupy with armed garrisons important points within our territory on our then western frontier.

It cost the United States nearly a million dollars to suppress this first insurrection which may almost be dignified by the term rebellion—a tremendous sum at that time—but it was well worth while. Throughout the period of over four years that this insurrection prevailed it is interesting to note the calmness, patience, dignity, wisdom and unyielding firmness that Washington displayed. The reflection of these qualities is well shown in the simple but profoundly impressive words of his message to Congress in which he portrays with vivid clearness the progress of events concerning the insurrection up to November 19, 1794, and gives expression to principles that have since been accepted as the cornerstone of our political faith:

“Fellow Citizens of the Senate and of the House of Representatives:

“When we call to mind the gracious indulgence of Heaven, by which the American people became a nation; when we survey the general prosperity of our country, and look forward to the riches, power and happiness to which it seems destined; with the deepest regret do I announce to you, that during your recess some of the citizens of the United States have been found capable of an insurrection. It is due, however, to the character of our Government, and to its stability, which cannot be shaken by the enemies of order, fully to unfold the course of this event.

“During the session of the year 1790, it was expedient to exercise the legislative power granted by the Constitution of the United States, ‘to lay and collect excises.’ In a majority of the states, scarcely an objection was heard to this mode of taxation. In some, indeed, alarms were at first conceived, until they were banished by reason and patriotism. In the four western counties of Pennsylvania, a prejudice, fostered and embittered by the artifice of men who labored for an ascendancy over the will of others, by the guidance of their passions, produced symptoms of riot and violence. It is well known that Congress did not hesitate to examine the complaints which were presented, and to relieve them as far as justice dictated or general convenience would permit. But the impression which this moderation made on the discontented did not correspond with what it deserved; the arts of delusion were no longer confined to the efforts of designing individuals.

“The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws, and associations of men began to denounce threats against the officers employed. From a belief that, by a more formal concert their operation might be defeated, certain self-created societies assumed the tone of condemnation. Hence, while the greater portion of the people of Pennsylvania itself were conforming themselves to the act of excise, a few counties were resolved to frustrate them. It was now perceived that every expectation from the tenderness which had hitherto been pursued, was unavailing, and that further delay could only create an opinion of impotency or irresolution in the govern-

ment. Legal process was, therefore, delivered to the marshal against the rioters and delinquent distillers.

"No sooner was he understood to be engaged in this duty than the vengeance of armed men was aimed at his person and the personal property of the inspector of the revenue. They fired upon the marshal, arrested him and detained him for sometime as a prisoner. He was obliged by the jeopardy of his life to renounce the service of other process on the west side of the Alleghany mountains, and a deputation was afterwards sent to him to demand a surrender of that which he had served. A numerous body repeatedly attacked the house of the inspector, seized his papers of office and finally destroyed by fire his buildings and whatsoever they contained. Both of these officers, from a just regard to their safety fled to the seat of government, it being avowed that the motives to such outrages were to compel the resignation of the inspector, to withstand by force of arms the authority of the United States, and thereby to extort a repeal of the laws of excise and an alteration in the conduct of government.

"Upon the testimony of these facts, an associate justice of the Supreme Court of the United States notified to me, that 'in the counties of Washington and Allegheny, in Pennsylvania, laws of the United States were opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshal of that district.' On this call, momentous in the extreme, I sought and weighed what might best subdue the crisis. On the one hand the judiciary was pronounced to be stript of its capacity to enforce the laws. Crimes which reached the very existence of social order were perpetrated without control, the friends of government were insulted, abused and overawed into silence, or an apparent acquiescence; and to yield to the treasonable fury of so small a portion of the United States would be to violate the fundamental principle of our Constitution, which enjoins that the will of the majority shall prevail. On the other, to array citizen against citizen, to publish the dishonor of such excesses, to encounter the expense and other embarrassments of so distant an expedition, were steps too delicate, too closely interwoven with many affecting considerations to be lightly adopted. I postponed, therefore, the summoning the militia immediately into the field, but I required them to be held in readiness, that if my anxious endeavors to reclaim the deluded and to convince the malignant of their danger should be fruitless, military force might be prepared to act before the season should be too far advanced.

"My proclamation of the seventh of August, last, was accordingly issued and accompanied by the appointment of commissioners who were charged to repair to the scene of insurrection. They were authorized to confer with any bodies of men or individuals. They were instructed to be candid and explicit in stating the sensations which had been excited in the executive, and his earnest wish to avoid a resort to coercion; to represent, however, that without submission, coercion must be the resort, but to invite them at the same time to return to the demeanor of faithful citizens by such accommodations as lay within the sphere of the executive power; pardon, too, was tendered to them by the government of the United

States and that of Pennsylvania, upon no other condition than a satisfactory assurance of obedience to the laws.

"Although the report of the commissioners marks their firmness and abilities, and must unite all virtuous men, by showing that the means of conciliation have been exhausted; all of those who had committed, or abetted the tumults, did not subscribe the mild form which was proposed as the atonement; and the indications of a peaceful temper were neither sufficiently general nor conclusive to recommend or warrant a further suspension of the march of the militia.

"Thus, the painful alternative could not be discarded. I ordered the militia to march, after once more admonishing the insurgents, in my proclamation of the twenty-fifth of September, last.

"It was a task too difficult to ascertain with precision the lowest degree of force competent to the quelling of the insurrection. From a respect, indeed, to economy, and the ease of my fellow citizens, belonging to the militia, it would have gratified me to accomplish such an estimate. My very reluctance to ascribe too much importance to the opposition had its extent been accurately seen would have been a decided inducement to the smallest efficient numbers. In this uncertainty, therefore, I put into motion fifteen thousand men, as being an army which, according to all human calculation, would be prompt and adequate in every view, and might, perhaps, by rendering resistance desperate, prevent the effusion of blood. Quotas had been assigned to the states of New Jersey, Pennsylvania, Maryland and Virginia—the governor of Pennsylvania having declared on this occasion an opinion which justified a requisition to the other states.

"As commander-in-chief of the militia, when called into the actual service of the United States, I have visited the places of general rendezvous to obtain more exact information and to direct a plan for ulterior movements. Had there been room for a persuasion that the laws were secure from obstruction—that the civil magistrate was able to bring to justice such of the most culpable as have not embraced the proffered terms of amnesty, and may be deemed fit objects of example; that the friends of peace and good government were not in need of that aid and countenance which they ought always to receive, and, I trust, ever will receive, against the vicious and turbulent; I should have caught with avidity the opportunity of restoring the militia to their families and home. But succeeding intelligence has tended to manifest the necessity of what has been done; it being now confessed by those who were not inclined to exaggerate the ill conduct of the insurgents, that their malevolence was not pointed merely to a particular law; but that a spirit, inimical to all order has actuated many of the offenders. If the state of things had afforded reason for the continuance of my presence with the army, it would not have been withholden; but every appearance assuring such an issue as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the seat of government, leaving the chief command with the governor of Virginia.

"Still, however, as it is probable, that in a commotion like the present, whatsoever may be the pretense, the purpose of mischief and revenge may

not be laid aside; the stationing of a small force for a certain period in the four western counties of Pennsylvania will be indispensable whether we contemplate the situation of those who are connected with the execution of the laws, or of others, who may have exposed themselves by an honorable attachment to them.

"Thirty days from the commencement of this session being the legal limitation of the employment of the militia, Congress cannot be too early occupied with this subject.

"Among the discussions which may arise from this aspect of our affairs, and from the documents which will be submitted to Congress, it will not escape their observation that not only the inspector of the revenue, but their officers of the United States in Pennsylvania have, from their fidelity in the discharge of their functions, sustained material injuries to their property. The obligation and policy of indemnifying them are strong and obvious. It may also merit attention whether policy will not enlarge this provision to the retribution of their citizens, who though not under the ties of office, may have suffered damage by their generous exertions for upholding the Constitution and the laws. The amount, even if all the injured were included, would not be great, and on the future emergencies the government would be amply repaid by the influence of an example that he who incurs a loss in its defense shall find a recompense in its liberality.

"While there is cause to lament that occurrences of this nature would have disgraced the name or interrupted the tranquillity of any part of our community, or should have diverted to a new application any portion of the public resources, there are not wanting real and substantial consolations for the misfortune. It has demonstrated that our prosperity rests on solid foundations by furnishing an additional proof that my fellow citizens understand the true principles of government and liberty; that they feel their inseparable union; that notwithstanding all the devices which have been used to sway them from their interest and duty, they are now as ready to maintain the authority of the laws against licentious invasions as they were to defend their rights against usurpation. It has been a spectacle displaying to the highest advantage the value of Republican government, to behold the most and the least wealthy of our citizens standing in the same ranks as private soldiers, prominently distinguished by being the army of the Constitution—undeterred by a march of three hundred miles over rugged mountains, by the approach of an inclement season or by any other discouragement. Nor ought I to omit to acknowledge the efficacious and patriotic co-operation which I have experienced from the chief magistrates of the states to which my requisitions have been addressed.

"To every description, indeed, of citizens, let praise be given, but let them persevere in their affectionate vigilance over that precious depository of American happiness, the Constitution of the United States. Let them cherish it, too, for the sake of those who from every clime are daily seeking a dwelling in our land. And when in the calm moments of reflection they shall have retraced the origin and progress of the insurrection, let them determine, whether it has not been fomented by a combination of

men, who careless of consequences and disregarding the unerring truth that those who rouse cannot always appease a civil convulsion, have disseminated from an ignorance or perversion of facts, suspicions, jealousies and accusations of the whole government.

"Having thus fulfilled the engagement which I took, when I entered into office, 'to the best of my ability, to preserve, protect and defend the Constitution of the United States,' on you, gentlemen, and the people by whom you are deputed, I rely for support."

It fell to the lot of men of master minds, notably Marshall and Webster, to interpret and to expound the Constitution in later years, but no thoughtful student of our history will fail to accord to Washington proper credit for first giving voice to sentiments concerning our fundamental law that were afterward expanded and elaborated by these men—sentiments that we of this generation are prone to accept as facts that have always existed and that were never questioned. With "affectionate vigilance over that precious depository of American happiness, the Constitution of the United States," it was Washington whose conceptions of federal authority under that Constitution pointed the way, who laid out the course that has since been followed; it was he who demonstrated the right of our government to "long endure," and, looking backward, we now perceive that the Whisky Insurrection, trifling as it may appear in the light of greater events of more modern times, was in reality the first great turning point in our national life.

The year 1794 was prolific of other events of importance in connection with our subject. The decisive victory of General Wayne at Fallen Timbers near the present city of Toledo has already been mentioned. That was followed by the Treaty of Greenville in western Ohio with the chiefs of the Indian tribes, and it paved the way for a consummation of the delicate negotiations with England which John Jay finally effected. This in turn resulted in the withdrawal of English troops from our territory and in the payment to England of the obligations assumed by the United States in the Treaty of Paris. The Northwest, as then so-called, freed from the menace of hostile Indians soon swarmed with emigrants from the east and within seven years the great new state of Ohio knocked at the door of the Union for admission. The national spirit was unquestionably growing in general favor.

The precedence established as one result of the suppression of the Whisky Insurrection was immensely valuable and served to give the Constitution a more firmly established position, but in the seventy-five years that followed, it had to be still further tested and stabilized.

In 1798 some unfortunate federal legislation commonly referred to as the Alien and Sedition acts resulted in resolutions by the legislatures of both Virginia and Kentucky condemning these laws as unconstitutional and void and declaring the right of the states to prevent their execution.

In 1814 delegates from the states comprising New England met at Hartford and drew up resolutions proposing amendments to the Constitution intended to prevent the enactment of federal laws that might be unwelcome to any state. This is referred to in the histories as the Hartford convention.

The idea of state sovereignty as against a broad national policy seems to have been the great political question upon which issue the best minds of the period of our early national growth were sharply in conflict. The tariff law of 1828 displeased the southern states. Calhoun stood out as the great exponent of nullification which meant the right of a state to declare null and void any federal law which it might deem unwise, inexpedient or adverse to its own interests. His position was a step beyond what had been advocated before, at least openly, in that he maintained that secession from the Union was logical and entirely defensible in case any law obnoxious to a state was enforced against its will. The advocacy of this theory in the senate of the United States by Hayne of South Carolina brought forth the great speech of Webster in reply which will doubtless stand for all time as a matchless example of logic and patriotic eloquence.

Not only was the doctrine of states' rights marked by these outstanding political incidents, but in the literature and the debates of the period from 1790 on for three-quarters of a century we find it to be a topic that was never allowed to be forgotten; indeed by subtle and clever influences it was kept alive in spite of the unbroken chain of defeats it suffered whenever an issue involving that sentiment was joined, until the great and final test and decision came in the secession of the South and the Civil war of 1861-1865.

Although the federal government has only the authority and the powers delegated to it by the several states, it is now definitely established that the extent of that authority and of those powers lies not in the hands of any state, or combination of states, to decide, but in the Federal Supreme Court. Happily, it is now accepted as an established principle that a proper measure of state pride can be maintained while at the same time giving way to a broader expression of love for the country as a whole. The Constitution has triumphantly survived all

the trials it has been forced to undergo. No longer is it regarded only as an interesting document providing merely for an experiment in government, but rather it is unanimously conceded to be the great charter of an enduring nation.